

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35934 of 2022 (O&M)

Date of Decision: 16.08.2022.

Angrej Singh

...Petitioner

Versus

Gurinder Pal Singh Dhillon

... Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Joginder Pal Sharma, Advocate
for the petitioner.

AVNEESH JHINGAN J. (ORAL)

This petition is filed seeking quashing of order dated 25.04.2022, Annexure P-4, passed by the learned Sessions Judge, Faridkot, whereby the revision petition filed by the complainant was allowed, remanding the matter back for recording findings afresh, after evaluating preliminary evidence.

The brief facts are that the accused (petitioner) was known to the complainant through Surjit Singh. The complainant intended to go abroad. The complainant was informed by Surjit Singh that the relatives of petitioner were settled in Canada and UK, he could help him for going to Canada. In December 2015 Surjit Singh and complainant met the petitioner, who asked him to arrange Rupees five to seven lakhs. On 3.12.2015 documents and Rupees one lakh were given to petitioner in presence of Surjit Singh. Complainant was assured that his visa for Canada will be arranged within one month. On demand of petitioner further amounts were paid on 08.12.2015, 14.12.2015, 28.12.2015, 02.01.2016 and 24.05.2016. Thereafter, neither the needful was done nor the amount refunded.

In an inquiry held by the SP(D) Faridkot, petitioner came up with a story that the amount was given to him for handing it over to Baba Ji Dera Changawa, as with his blessings many people were successful in going abroad. Further that the petitioner entered into a Panchayati compromise to escape criminal liability and agreed to pay Rs. 2 lakh but he could not return the amount.

A complaint was filed and complainant to substantiate the allegations examined Head Constable Chamkaur Singh who brought the record of the application filed by the complainant against the petitioner. The attested copy of compromise was exhibited as CW1/C. CW2-Surjit Singh supported the case of the complainant, so did CW3 Ajit Pal Singh. Complainant himself stepped into the witness box as CW4. The Judicial Magistrate, Faridkot vide order dated 09.04.2018, dismissed the complaint. It was held that there was money dispute between the parties and moreover, the respondent was not able to explain the source of money given to the petitioner.

Aggrieved of the order criminal revision was filed. The revision was allowed vide order dated 25.04.2022, hence the present petition.

In revision, the Court considered that on basis of preliminary evidence led by complainant it is to be ascertained as to whether prima facie case is made out or not and it is not to be seen at this stage whether the accused can be convicted or not.

It was appreciated that CW1 to CW4 in their testimonies supported the case of the complainant. The allegations are that petitioner duped complainant of huge amount on pretext of sending him to Canada. Petitioner was aware that he was not competent to send the complainant abroad yet he ostensibly received amount from him. In panchayat the petitioner admitted to

return rupees two lakh to the complainant. It was held that the lower court without considering the entire material before it, recorded a finding that it was a money dispute between the parties. The revision petition was allowed and matter was remanded.

Learned counsel for the petitioner submits that it was a money dispute which was camouflaged as a criminal act. Contention is that the petitioner is an illiterate person, he is not carrying a visa consultancy and no prudent person will believe that an illiterate person will be able to send him abroad.

The law is settled that in complaint, at stage of summoning only the prima facie evidence is to be seen. It is not for the Court to determine as to whether the evidence before it would culminate into conviction or not.

Hon'ble Supreme court in *S.W. Palanitkar Vs. State of Bihar* **2002(1) SCC 241** held: -

“In case of a complaint under Section 200 Criminal Procedure Code, 1973 or Indian Penal Code a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words “sufficient ground” used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.”

The contentions raised by the learned counsel for the petitioner do not enhance the case of petitioner. The money was received from complainant on an assurance to help him in going abroad, as the relatives of the petitioner

were settled there. The payment was made in presence of Surjit Singh and he supported the allegations with his testimony. There are witnesses and atleast prima facie evidence to support the allegations of the complainant. At the initial stage, there was no occasion for the Court to go deep into the veracity of the preliminary evidence.

The matter needs to be considered from another angle that in compromise before the Panchayat the petitioner admitted that he had to pay back Rs.2 lakh but the terms were not adhered to.

No case is made out for interference in the well-reasoned order passed in revision.

Dismissed.

16.08.2022
rekha sharma

(AVNEESH JHINGAN)
JUDGE

<i>whether reportable</i>	<i>Yes/No</i>
<i>whether speaking/non-speaking</i>	<i>Yes/No</i>